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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Requests of US WEST Communications, Inc. for Interconnection Cost Adjustment Mechanisms	)	CC Docket No. 97-90
	)	CCB/CPD 97-12
	)	
	)	

COMMENTS IN SUPPORT BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to the Public Notice released March 4, 1997, in the above docket ("US WEST ICAM Petition;" DA 97-469), the Association for Local Telecommunications Services ("ALTS") hereby comments in support of the petition for declaratory ruling and contingent petition for preemption. Rather than repeat the arguments presented in the US WEST ICAM Petition by ELI, McLeod, and NEXTLINK, ALTS hereby offers its own reasons why the petition should be granted.

SUMMARY

US WEST is seeking authority from its state commissions to recover the so-called "start up" costs of serving CLECs via an intrastate "Interconnection Cost Adjustment Mechanism." But Sections 251 and 252 indicate that CLECs should pay for any costs they impose on ILECs in their interconnection agreements (as US WEST has emphasized to both the Commission and Eighth Circuit), and neither section excludes start up costs. Accordingly, start-

up costs (which apply to competitive entry decisions as well as to regulated businesses) are fully accommodated within the comprehensive forward looking cost principles which the Commission, and most states, have adopted to determine the proper prices for interconnection agreements under Sections 251 and 252. If US WEST believes the Commission or states have failed to properly implement this standard in general, or as to start up costs in particular, it should have raised that claim with the Eighth Circuit or in its appeals from state agency decisions. US WEST is certainly not entitled to take a second bite at such amounts by seeking to recover them again via its proposed ICAM mechanism.

Second, there is currently no accepted separations mechanism for attributing any part of such costs to the intrastate jurisdiction. Consequently, even if the ICAM mechanism did not recover start up costs already conceptually embraced in the pricing principles adopted by the Commission and several states under Sections 251 and 252 (which it clearly does), US WEST currently has no basis for separating the intrastate portion of such amounts.

Third, the substantive defects of US WEST's ICAM proposal are manifest, yet the costs of opposing it in US WEST's numerous state jurisdictions are appreciable. CLECs should not be obligated to hire economists, and spend considerable time and resources helping overworked state commissions recognize what may

be obvious from a competitive economics perspective, but which may be unfamiliar to staff who have dealt exclusively with a regulatory context: the forward looking cost standard adopted by the Commission and various states clearly encompasses start up costs. By simply restating what is clear on the face of its decision, the Commission would relieve those CLECs competing in US WEST's territory from a serious and clearly unwarranted burden.

I. ALL ILEC COSTS CAUSED BY CLECS SHOULD BE RECOVERED THROUGH INTERCONNECTION AGREEMENTS PURSUANT TO SECTIONS 251 AND 252.

From ALTS's viewpoint, the issues raised in the US WEST ICAM Petition are simple. US WEST claims it is incurring "certain extraordinary interconnection costs" created by CLECs (US WEST Petition in Utah PSC Docket no 97-049, filed January 3, 1997, at p. 2). In order to recover these costs, US WEST is filing requests with its various state commissions seeking permission to impose an intrastate "Interconnection Cost Adjustment Mechanism" ("ICAM") on CLECs. Three CLECs -- Electric Lightwave, Inc. ("ELI"), McLeod USA Telecommunications Services, Inc. ("McLeod"), and NEXTLINK Communications, L.L.C. ("NEXTLINK") have filed a petition with this Commission seeking a ruling that US WEST is not entitled to its "ICAM" recovery mechanism.

According to US WEST (id. at 2):

> "The Telecommunications Act of 1996 contains no mechanism for financing or paying for unplanned network upgrades, the acceleration of planned upgrades in order to comply with state or federal mandates, extensions and/or modifications of network facilities or operational support systems, including

> data bases and electronic interfaces ... all of which are or will be necessary to provide USWC's competitors with interconnection, access to unbundled network elements and the ability to resell USWC retail services."

First, as a threshold matter, it is impossible to determine from US WEST's description whether these costs are actually caused by CLECs, or whether US WEST is simply attempting to cure its notorious service problems by charging needed investments to its potential competitors.

Second -- and also as a threshold matter -- the fact that certain ILEC expenses are associated with the advent of competition does not dictate they be recovered from CLECs. Certain costs, such as number portability, are properly recoverable from the end users which will enjoy the benefits of competition.

Assuming purely for the sake of argument that some aspect of the costs discussed by US WEST should be recovered from CLECs, it is apparent they should only be recovered via interconnection agreements. Nothing in Sections 251 or 252 suggests that the prices imposed by interconnection agreements -- whether negotiated or arbitrated -- are not subject to cost causation principles. On the contrary, the hundreds of pages devoted to pricing rules in the Local Competition Order, CC Docket No. 96-98, decided August 8, 1996, amply demonstrate the Commission's concern that cost recovery for interconnection should reflect cost-causation. In particular, nowhere does the Commission (nor, to the best of

ALTS's knowledge, any state) exclude "start-up costs" from recovery in interconnection agreements pursuant to the Section 251-252 process.[1] US WEST itself agreed in its comments that (May 16, 1996, comments at p. 28): " ... the Commission cannot establish a rate for interconnection on the assumption that rates for other services will compensate LECs for the loss."[2]

Allowing ILECs to recover costs from CLECs outside the Section 251-252 interconnection procedures is not only unnecessary, it would clearly frustrate the pro-competitive goals of the 1996 Act by making CLEC entry decisions hostages of the state tariff process. No CLEC would be free to carry out its business plans without fearing that ILEC tariff amounts would invalidate their basic assumptions. Since ILECs are fully entitled to recover such amounts in interconnection agreements -- a fact US WEST does not dispute -- any tariff "true-up" mechanism for actual CLEC-caused costs (repeating again that US WEST has fail to show the existence of any such category among its current

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[1] US WEST's own citations from the Local Competition Order amply demonstrate the Commission's recognition that interconnection agreements recover all CLEC-caused ILEC expenses (see, e.g., Local Competition Order at ¶ 381: "Again the costs associated with these mechanisms will be recovered from requested carriers," and the other passages from the Local Competition Order quoted at p. 5 of US WEST's March 3d opposition to the US WEST ICAM petition.

[2] See also id. at p. 35: "In the context of this rulemaking the Commission must establish a framework whereby costs incurred in unbundling LEC networks for the purpose of providing interconnection or network elements can reasonably be recovered on a timely basis."

grab-bag of expenses) must be rejected.

In addition, the forward-looking pricing principles demanded by Sections 251 and 252, and adopted by the Commission (as well as several states which have addressed this issue) to govern pricing of interconnection agreements already conceptually encompass all costs that would be caused by CLECs:

> "The term 'long run' in the context of 'long run incremental cost,' refers to a period long enough so that all of a firm's cost become variable or avoidable" (Local Competition Order at ¶ 677).
>
> "The forward-looking costs of capital (debt and equity) needed to support investments required to produce a given element shall be included in the forward-looking direct cost of that element" (id. at ¶ 691).
>
> "This 'longrun' approach ensures that rates recover not only the operation costs that vary in the short run, but also fixed investment costs that, while not variable in the short term, are necessary inputs directly attributable to providing the element" (id. at ¶ 692).

Thus, assuming solely for the sake of argument that any of US WEST's "extraordinary start-up costs" are actually cost-caused by CLECs, and are not recoverable from the beneficiaries of competition, they are conceptually captured by the forward looking economic principles adopted by the Commission (as well as several states) for interconnection agreement pricing.[3]

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[3] "Extraordinary start up costs" also exist in competitive industries when entry decisions are being made, so any implementation of a forward-looking cost standard has to encompass such amounts in order to permit economically rational decisions. This is fully demonstrated by the various models being used to implement the forward looking economic cost standard. BCM and Hatfield are each "green field" models; i.e., they capture the (continued...)

As noted above, US WEST argued to the Commission that the interconnection agreements should recover all CLEC-created costs, and it recently repeated this argument to the Eighth Circuit (see the brief of US WEST and other RBOCs filed in the Eight Circuit November 18, 1996, at p. 32: "Section 252(d)(1) of the Act unambiguously provides that "determinations ... of the just and reasonable rate" for interconnection and network elements "shall be ... based on the cost ... of providing the interconnection or network element;" emphasis in original).

Thus, US WEST in front of the Commission and Eighth Circuit insists that interconnection pricing standards should recover all CLEC-imposed costs -- and attacks the particular principles and methodologies adopted by the Commission for failing to do so -- yet in its ICAM proposal it contends there are CLEC-caused costs that also should be recovered outside Sections 251 and 252 interconnection agreements.

But the fact that US WEST does not agree with the Commission's decision to adopt forward-looking economic costs as the pricing standard for interconnection agreements (nor, presumably, with any of the states which concur), nor with the particular methodologies being used to implement this standard,

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[3](...continued)
economic costs of building and running new networks from the ground up. Accordingly, any incremental start up costs in existing ILEC networks are already theoretically captured in these models, and -- since an ILEC always has the decision to build a network "from the ground up" -- could not possibly fail to recover such costs.

does not entitle it to bury its head in the sand and pretend that this pricing standard does not already conceptually reflect the very costs it seeks to recover via its ICAM mechanism.

Stated bluntly, US WEST is trying to "double dip" start-up expenses already encompassed in the pricing standard for interconnection agreements. The Commission should reject this blatant effort to end run the interconnection pricing rules.

II. THERE ARE NO SEPARATIONS RULES AT PRESENT APPLICABLE TO START UP COSTS FOR CLEC SERVICES.

There is currently no accepted separations mechanism for attributing any part of such costs to the intrastate jurisdiction, and the remainder to the interstate. Consequently, even if the ICAM mechanism did not double-recover start up costs already embraced via Sections 251 and 252 and the pricing principles adopted by the Commission and states pursuant thereto (which it clearly does), US WEST has no basis for separating the intrastate portion of such amounts.

III. THE COMMISSION MUST ACT TO SPARE CLECS THE HEAVY BURDEN OF OPPOSING US WEST'S MERITLESS PROPOSAL IN NUMEROUS JURISDICTIONS.

The substantive defects of US WEST's ICAM proposal are manifest, yet the costs of opposing it in US WEST's numerous state jurisdictions are appreciable. The Commission needs to act now before unfair burdens are incurred by new entrants. CLECs should not be obligated to hire economists, and spend considerable time and resources in helping overworked state commissions recognize

what may be obvious from a competitive economics perspective, but which may be unfamiliar to staff who have dealt exclusively with a regulatory context: The forward looking cost standard adopted by the Commission and various states clearly encompasses start up costs.[4] By simply restating what is clear on the face of its decision, the Commission would relieve those CLECs competing in US WEST's territory from a serious and clearly unfair burden.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission grant the petition for declaratory ruling and contingent petition for preemption.

Respectfully submitted,

By: _____

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[4] See, e.g., Harris Reply Affidavit on behalf of US WEST in CC Docket No. 96-98, filed May 30, 1996, at p. 6: " ... in competitive markets, embedded costs based on accurate economic depreciation rates are, by definition, equal to `forward-looking costs, because economic depreciation rates anticipate and account for the changes in technology, substitute products and competitive conditions that affect the economic lives of assets."

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments by the Association for Local Telecommunications Services was served April 3,1997, on the following persons by First-Class Mail or by hand service, as indicated.

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